RECENT AMERICAN DECISIONS.

Supreme Court of Appeals of Virginia.

DE VOSS ET AL. *v.* THE CITY OF RICHMOND.

The power of a municipal corporation to borrow money is entirely distinct from those powers bestowed upon it for public purposes, and pertaining to its functions as a local government, exercising a part of the sovereignty of the state.

In the exercise of a power to borrow money, a municipal corporation, *quoad hoc*, is to be treated as a private person or an ordinary trading corporation, and will be held to the same degree of responsibillty for the acts of its officers and agents.

Where a city issues its registered bonds, and invites the public to deal upon the faith of them as the ultimate evidence of title, it cannot be heard to gainsay their validity in the hands of a *bonâ fide* holder, although in the issuing of the bonds the agents of the city violated their instructions.

Therefore, the city of Richmond was estopped to deny the validity of a registered bond regularly transferred and in the hands of a *bonâ fide* purchaser, even though such bond was issued by its transfer officer in disregard of instructions to make a certain recital on the face of the bond, which if made would have notified the purchaser of the facts creating the alleged invalidity, and this because, by its ordinances, the city had declared that the delivery of a registered bond, with a power of transfer, should operate to pass the complete title, both at law and in equity, to a *bonâ fide* purchaser; saving, that all payments by the city to the registered owner should be deemed valid.

THIS was an appeal from a decree of the Circuit Court of Richmond, in Equity.

In 1862, Asa Otis, a citizen of Massachusetts, was the owner of a registered bond of the city of Richmond for $2300. By a decree of a court commissioned by the Confederate government, the title to this bond was confiscated, and the city of Richmond issued a new bond to Henry S. Brooke, receiver. Under an ordinance of Richmond, it was the duty of the auditor, in issuing such a new bond, and in all future transfers of it, to recite on its face that it was issued in obedience to a decree of the court, and on account of certain other bonds confiscated by the decree. This was done on the bond issued to Brooke.

In October 1862, the bond to Brooke was surrendered and a new one issued to defendants Maury & Co., and in February 1863, this in turn was surrendered and a new one issued to defendant De Voss. In both of these last cases, however, the auditor inadvertently omitted to recite that the bonds represented an original that had been confiscated; and the transactions having

been through a broker, neither Maury & Co. nor De Voss had actual notice of that fact.

The power of the city of Richmond to borrow money and issue evidences of indebtedness therefor, is unlimited. The city declined to recognise De Voss as a creditor, and filed a bill in the Circuit Court against De Voss, Maury & Co., and Otis, setting forth the facts, and praying that the bond to De Voss might be decreed void and surrendered for cancellation. It was conceded throughout that the decree of forfeiture as to Otis was utterly void.

The Circuit Court, MEREDITH, J., decreed the bond void, and ordered it to be surrendered. From this decree the present appeal was taken.

James Alfred Jones, for De Voss.

Page & Maury, for Maury & Co.

R. T. Daniel, for the City of Richmond.

The opinion of the court was delivered by

JOYNES, J. (after stating certain points that the court had not felt called upon to consider).—I shall assume, for the purposes of the case, as was assumed in the argument, that the decree of confiscation, and the proceedings under it, did not affect the title of Otis to claim payment of the bond held by him, or, of themselves, give validity to the bond held by De Voss. And besides, it would not be competent to consider the effect of that decree as between the city and Otis, because no such question has been raised in the pleadings. Whatever may be the rights of De Voss, the city is not at liberty, on the present pleadings, to controvert the title of Otis.

It is conceded that the bond held by De Voss was executed and issued to him by the officers of the city to whom was intrusted, by its laws, the general duty of executing and issuing bonds. In the argument for the appellants, these officers were treated as the agents of the city, and the general principles of the law of agency were regarded as applying to the city in respect to the acts and functions of such officers, in like manner as to other corporations and their officers and servants.

For the appellee it was contended, that the functions of these officers, in reference to the execution, transfer, and renewal of

bonds of the city, pertain to the execution by the city of the powers and duties devolved upon it in the character of a local government, and that the city cannot be held liable for their misfeasance or negligence in the discharge of their functions, according to the principles on which this court proceeded in *City of Richmond* v. *Long's Adm'r.*, 17 Gratt. Rep. 375.

But that principle has no application to this case. The power which was in question in the case referred to, was one of those conferred upon the city for public purposes only, and pertained to its character as a local government. It was not conferred with any view to the private advantage or emolument of the city. But the power to borrow money is bestowed primarily for the advantage and benefit of the city. It has no direct relation to the powers and duties of the city as a local government. It may be exercised, in a particular case, with a view to the better execution of those powers and duties, but it is not essential to their execution. It involves no exercise of sovereign power over the persons or property of the citizens, but is such a power as may be exercised by a private individual, or by an ordinary trading or commercial corporation. Such a power is entirely distinct, in contemplation of law, from those which are bestowed upon the city for public purposes only, and pertain to its functions as a local government, exercising, for that purpose, a portion of the sovereign power of the state. The city is *quoad hoc* a private corporation. This distinction is taken by Sir LLOYD KENYON, Master of the Rolls, in *Moodaly* v. *East India Co.*, 1 Brown C. C. 469. The plaintiff had taken a lease from the company, granting him permission to supply the inhabitants of Madras with tobacco for ten years. Before the term was out the company dispossessed the plaintiff, and granted the privilege to another. The plaintiff filed a bill of discovery, with a view to bringing an action against the company. It was objected, on behalf of the defendants, that the act complained of was incident to their character as a sovereign power, and could not be made the subject of a suit. His Honor admitted that no suit would lie against a sovereign power for anything done in that capacity; but he held that the defendants, in that case, did not come within the rule. He said, "They have rights as a sovereign power; they have also duties as individuals. If they enter into bonds in India, the sums secured may be recovered here. So in this case, as a

private company, they have entered into a private contract to which they must be liable."

The power to borrow money is of course a discretionary power, to be exercised or not at the pleasure of the city, and in such manner as it may see fit. But when the city, through its proper authorities, has determined to exercise this power, and has prescribed how the bonds shall be executed, how they shall be transferred, and how new bonds shall be issued to the assignees, duties devolve upon the city which are absolute and purely ministerial. The holder of a bond has a right to transfer it. The city is bound to allow the transfer, to make the proper registry, and to issue a new bond to the assignee. For a refusal to perform these duties, an action will lie against the city, though perhaps the performance of them cannot be enforced by *mandamus:* Angell & Ames on Corp., §§ 384, 710. The city may, and indeed must, from the necessity of the case, confide the performance of these duties to officers and agents, but they perform them in the place and stead of the city; their acts in the execution of these duties are the acts of the city. They are the mere agents and servants of the city, and in such a case the maxim *respondeat superior* applies: *Sawyer* v. *Corse*, 17 Gratt. Rep. 230. See *Bailey* v. *Mayor, &c., of New York*, 3 Hill Rep. 531; *City of Dayton* v. *Pease*, 4 Ohio N. S. Rep. 80; *Clark* v. *Mayor, &c., of Washington*, 12 Wheat Rep. 40; *Thayer* v. *Boston*, 19 Pick. Rep. 511; *Weightman* v. *Corporation of Washington*, 1 Black Rep. 39; *Conrad* v. *Ithaca*, 16 N. Y. Rep. 158.

It was contended for the appellee, that De Voss must be taken to have had notice of the character and history of the bond issued to him. It is not pretended that he had actual notice, and it is very clear that he did not have such notice. But he purchased the bond from R. H. Maury & Co., by whom it was transferred to him in February 1863, and it was transferred to them in October 1862, by H. S. Brooke, receiver under the decree of confiscation. From this it is argued, De Voss must be charged with constructive notice of the character of the bond, which he might have ascertained if he had traced it back through the books of the auditor. But I do not think so. The bond delivered to De Voss by Maury & Co. was perfectly regular on its face. De Voss had no reason to suspect that it was a bond issued in lieu of one that had been confiscated, but he had the best

reason to believe the contrary. For 1, The bond did not contain the statement which such bonds were required to contain by the resolution of the council; and 2, Maury & Co. knew that De Voss would not purchase such bonds, and their delivery of this bond to him was an assurance that it did not belong to that class. It does not appear that he ever saw the bond which Maury & Co. held; but if he had seen it, that too was regular on its face. There was nothing, therefore, to excite his suspicion or to put him on inquiry. All that can be said is, that he might have ascertained the fact if he had gone to the auditor's office, and traced the bond back to its source. But that is not enough to charge him with constructive notice of what he might thus have ascertained, in the absence of anything to put him on inquiry: 2 Rob. Pr. 29; Opinion of CABELL, J., in *French* v. *Loyal Co.*, 5 Leigh Rep. 627. And according to the recent cases in England, a party will not be charged with constructive notice unless the circumstances are such that the court can say, that it was his duty to acquire the knowledge in question, and that his failure to obtain it was the result of culpable negligence; it is not enough that he should, from a want of prudent caution, have neglected to make inquiries, but he must have designedly abstained from such inquiries for the purpose of avoiding knowledge; there must be a wilful blindness, and not mere want of caution: *Jones* v. *Smith*, 1 Hare Rep. 55; S. C. on appeal, 1 Phillips Rep. 244; *Ware* v. *Lord Egmont*, 31 Eng. L. & Eq. Rep. 89. It was argued that De Voss claims under assignment from Maury, and that it was his duty to look to Maury's title, by tracing the bond back through the previous transfers. This, however, is not the title which De Voss holds. He holds a new bond given directly to himself. The nature of this title will be more fully considered hereafter.

The validity of the bond held by De Voss is controverted on the ground, that the officers of the city by whom it was issued exceeded their authority in doing so. This objection is founded on the resolution of the council passed April 14th 1862. This resolution directed, 1, That bonds of the city should be issued to H. S. Brooke, receiver, in obedience to the decree of confiscation; and 2, in substance that it should be stated on the face of such bonds, and also on the face of all others that might be given in place of them, in case of transfer, that they were issued in place of bonds which had been confiscated. The object of this last

provision was to give notice to purchasers of this class of bonds, so that they should cease to be binding on the city in case the decree of confiscation should be overthrown by the event of the war.

It is undoubtedly true that it was the intention of the council that no bond, in lieu of a confiscated bond, should be issued, in any case, without the special statement on its face required by the resolution. The prohibition is as plain as if the language of the resolution had been in the form of express prohibition. As between the city and the officers, therefore, it limited, in respect to this class of bonds, the authority of the officers.

But the authority of these officers to transfer bonds and to issue new ones, was not derived from this resolution. They had a general authority for these purposes, conferred by the ordinance. They had long been in the habit, also, of making such transfers and renewals, from which the public might have inferred a general authority to do so. This resolution, with a view to the protection of the city, directed the officers not to exercise their authority in respect to this particular class of bonds, except in a particular way. The officers were relied upon to observe this direction, and it does not appear in the record that the resolution was ever communicated to the public. There appears to be strong ground, therefore, to say, as was contended by the counsel for the appellants, that, in respect to the public, this resolution did not operate as a limitation of the apparent power of the officers, which remained the same as before, but was only in the nature of private instruction as to the manner in which they should execute their authority in particular cases. If so, it is clear that the act of the officers in issuing the bond to De Voss, in conformity with their apparent authority, was not vitiated by their omission to observe the direction contained in the resolution. But under the ordinance the officers had no authority to issue a new bond without the surrender of the old one, except in the case of a lost bond. The power to make the first issue of bonds in place of those which had been confiscated, was derived, therefore, from this resolution alone. It was conferred on special terms in this, that the bonds were to be in a particular form, which was prescribed for an important purpose. Every bond that might be issued in place of these was also to have the same form.

In this view it may be contended, that this resolution had the

effect, in respect to this class of bonds, of taking away from the officers the general power which they before had, and of substituting for it a new and limited authority, of which the public must take notice. I do not think it worth while to discuss this question, and will assume, for the purpose of the argument, that the view just stated is a sound one.

Assuming that the officers had thus only a limited authority, of the extent of which the public were bound to take notice, in respect to the renewal of this class of bonds, the counsel for the appellee contended that the bond held by De Voss, which was not issued in conformity with this authority, cannot be held binding on the city. The counsel for the appellants contended, on the other hand, that the city cannot be allowed to avail itself of this defence against De Voss, who took the bond issued to him without a knowledge of the fact that the officers exceeded their authority in issuing it. And I think this position may be maintained on principle and authority.

The city of Richmond is authorized by its charter to contract loans without limit as to amount, and to issue bonds or certificates of debt for the money borrowed. It provided by an ordinance, which is a transcript of a law of the state (Code of 1860, p. 264), for the execution, transfer, and renewal of these bonds or certificates. They are to be under seal, to be registered in the office of the auditor, and to be subscribed by the President of the council and the Chamberlain. Upon the surrender of a certificate at the office in which it is registered, a transfer may be made of the whole amount, or any part thereof, by the person appearing on the books to be the owner, or by another having a power of attorney from him to make the transfer. When a transfer is made, the old certificate is to be cancelled and filed in the office of the Chamberlain, and one or more new certificates issued. New certificates may be obtained by a holder, on application, in the place of an old one, when there has been no transfer. Every new certificate is to be registered, signed, and countersigned like the former one. When a certificate has been lost, the holder may obtain a new one on affidavit and three months' advertisement of the loss, and upon giving bond and security to indemnify all persons against any loss by reason of issuing the new certificate. The same ordinance also provides, that the person appearing on the books of the office in which any certificate is registered

as the owner thereof, shall be deemed the owner as regards the city, so as to make valid all payments to him on account thereof, made before a transfer of the certificate on the books of the office. But if the person so appearing on the books as owner, shall, *bonâ fide* and for valuable consideration, sell, pledge, or otherwise dispose of a certificate to another, and deliver to him the certificate with power of attorney authorizing the transfer thereof on the books of the proper office, the title of the former to said certificate (both at law and in equity) shall vest in the latter, for the whole amount of the certificate, or so much thereof as may be necessary to effect the purpose of the sale, pledge, or other disposition; and it shall so vest, not only as between the parties themselves, but also as against the creditors of, and subsequent purchasers from the former, subject to the last preceding provision in respect to payments by the city.

Under these arrangements the bonds of the city were put upon the market. It is manifest that a leading object contemplated by these arrangements, was to give security to the title of holders of the bonds, and thus to promote their credit. If the bonds had been made so as to pass by assignment merely, each successive assignee would have taken only an equitable title, and the bonds in his hands would have been subject to the same defences to which they would have been subject in the hands of any prior holder. It is provided, however, that upon each successive transfer a new bond shall be issued in the name of the transferee, which will give him a legal title to demand payment of the money. See *Union Bank* v. *Laird*, 2 Wheat. Rep. 390; *Black et al.* v. *Zacharie & Co.*, 3 Howard Rep. 483; *Fisher et al.* v. *Essex Bank*, 5 Gray Rep. 373. So an assignee for value who receives a bond from the holder, with a power of attorney to transfer it, acquires, under the ordinance, the legal title of the holder before a transfer on the books; subject only to the right of the city to make payment to the registered owner. The new certificate, or the delivery of an old certificate, with a power of attorney to transfer it, will cut off all defences which the city might have against any prior holder. For the question whether the holder of an obligation for the payment of money is subject to the defences of the debtor against a prior holder, depends, in the absence of notice or fraud, upon the character of his title, as legal or equitable. If it is an ordinary chose in action, and therefore only assignable in

equity, it is subject to all the rights, legal and equitable, which the debtor had against a former holder. For while a court of equity will sustain the rights of the assignee, it will also sustain the rights of the debtor existing before notice of the assignment; and these, being prior in time to those of the assignee, prevail over them. But where the assignee takes the legal title, without fraud or notice, this principle does not apply; the title of the holder is absolute, and all defences of the debtor against prior holders are cut off.

The *bonâ fide* holder of a bond issued to him stands, therefore, in this respect, in the position of the holder of a bill of exchange or negotiable note. This is conclusive to show that he is not bound to look behind the bond. The city cannot deny the title of the registered owner, who still holds his bond. Any other principle would lead to embarrassment and inconvenience, and greatly impair the credit of the bonds. To require a holder to investigate the previous history of his bond, he must examine the books in the auditor's office and the files in the chamberlain's office, which are not open to public inspection. It would often be impossible for him to trace the history of his bond from the union, under one name, of a number of bonds bought from different persons. On the other hand, it is the duty of the officers of the city to make every necessary investigation, at each successive transfer, and they have all the means of doing so.

It is of the very nature of such a bond, and the very object for which it is issued, that it shall furnish authentic and conclusive evidence of the holder's title to demand the money it calls for. Such is the general understanding upon which such bonds and stocks are bought and sold in the market, and any other principle would be fatal to the credit of such securities. In *Davis* v. *Bank of England*, 2 Bing. Rep. 393 (9 Eng. C. L. Rep. 444), when the bank had permitted certain stock in the public funds standing on the books of the bank to be transferred under a forged power of attorney, the Court of Common Pleas said: "We are not called on to decide whether those who purchase the stock transferred to them under the forged power, might require the bank to confirm that purchase to them, and to pay them the dividends on such stocks, or whether their neglect to inquire into the authenticity of the power of attorney might not throw the loss on them, that has been occasioned by the forgeries. But to prevent, as far as

we can, the alarm which an argument urged on behalf of the bank is likely to excite, we will say, that the bank cannot refuse to pay the dividends to subsequent purchasers of these stocks. If the bank should say to such subsequent purchasers, the persons of whom you bought were not legally possessed of the stocks they sold you, the answer would be, the bank, in the books which the law requires them to keep, and for keeping which they receive a remuneration from the public, have registered these persons as the owners of these stocks, and the bank cannot be permitted to say that such persons were not the owners. If this be not the law, who will purchase stock, or who can be certain that the stock which he holds belongs to him? It has ever been the object of the legislature to give facility to the transfer of shares in the public funds. This facility of transfer is one of the advantages belonging to this species of property, and this advantage would be entirely destroyed if a purchaser should be required to look to the regularity of the transfer to all the various persons through whom such stock had passed. Indeed, from the manner in which stock passes from man to man, from the union of stocks bought of different persons under the same name, and the impossibility of distinguishing what was regularly transferred from what was not, it is impossible to trace the title of stock as you can that of an estate. You cannot look further, nor is it the practice even to attempt to look further, than the bank books for the title of the person who proposes to transfer to you." In conformity with these views, it was held in *Bank of Kentucky* v. *Schuylkill Bank*, 1 Parsons' Sel. Cas. 180, in reference to spurious stock issued by an agent of the bank, and transferred, from time to time, to innocent purchasers, that against *bonâ fide* holders of such stock, the bank would be estopped from going beyond its last certificate, in any question between the bank and such holder touching the obligatory force of such certificate on the corporation, p. 250. To the same effect is the opinion of REDFIELD, J., in *Sabin* v. *Bank of Woodstock*, 21 Verm. Rep. 353; cited with approbation in *Fisher* v. *Essex Bank*, 5 Gray Rep. 373.

The common course of business in the sale and purchase of such bonds, shows that such is the general understanding as to the character and effect of the bond. A party having a bond to sell delivers it to a broker, with a power of attorney authorizing an attorney to transfer it to ——, the name of the transferee being

left blank. When a purchaser is found, the blank is filled with his name, the transfer is made in the books, and a new bond issues to the purchaser. The purchaser takes the bond, but he seldom knows, and never cares, who held the previous bond.

There is nothing unreasonable or harsh in holding the city to be estopped from disputing the title of De Voss. On the contrary, it is highly just and reasonable. The city appointed officers to issue its bonds in whom it confided. It knew that its bonds were the subject of daily traffic in and out of Richmond. From the nature of the business, it must have expected and intended the public to confide in their officers. There were two classes of bonds to be issued, and the class to which each bond belonged was to be indicated by its form. The officers were specially intrusted by the city with that duty; they had the means of knowing the first in every case, and could not make a mistake without gross negligence. These means were not equally open to the public.

Under these circumstances it was natural that purchasers should presume that the officers did their duty. They had a right to rely on such a presumption in their dealings.

Indeed it was necessary for them to do so, and it would be unjust to allow the city to say to them, when they dealt in good faith, that they ought not to have relied on it.

The case of *The Royal British Bank* v. *Turquand*, 5 El. & Bl. Rep. 248 (83 E. C. L. R.), was an action against the official manager of a railway company (that being the mode of suing the company), upon a bond for 2000*l.*, payable to the plaintiff, and signed by two directors, under the seal of the company.

There was a plea setting out a clause in the deed of settlement of the company, which provided that the company might borrow on bond, such sums as should, from time to time, by a general resolution of the company, be allowed to be borrowed, and averring that there was no such resolution authorizing the making of this bond. The Court of Queen's Bench held the plea to be bad. The judgment was affirmed in the Exchequer Chamber, 6 El. & Bl. Rep. 327 (88 E. C. L. R.). JERVIS, C. J., delivering the opinion of the whole court, said: "We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they

are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so, on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which, on the face of the documents, appeared to be legitimately done."

In the case of *The Prince of Wales Co.* v. *Harding*, E. B. & E. 183 (96 E. C. L. R.), which was an action against the official manager of the Atheneum Assurance Company upon a policy, the deed of settlement provided (sect. 20) that the common seal should not be affixed to any policy except by the order of three directors, signed by them and countersigned by the manager, and that (sect. 28) every policy should be given under the hands of not less than three directors, and sealed with the common seal. The policy in question was sealed with the common seal and signed by three directors, one of whom was manager, but there was no previous order made, as required by the 20th section. The case was elaborately argued by the most eminent counsel. It was contended for the defendant that the previous order required by the 20th section, was a condition precedent to the power of the directors to affix the seal to the policy, that the directors were agents with limited authority, that those who contracted with them had notice of the limits, because the statute conferred the authority, subject to the provisions of the act and of the deed of settlement which was registered for public inspection, and that the shareholders, as the principals, had a right to repudiate every policy not executed in pursuance of the authority given to the directors. The Court of Queen's Bench, in an elaborate judgment, overruled this argument, and held that the policy was binding on the company.

It was held that a person receiving a policy in good faith had a right to presume that the directors who signed it had done their duty, and that they had the preliminary order for executing it.

The case of *The Royal Bank* v. *Turquand* was cited with approval by the Supreme Court in *Commissioners of Knox County* v. *Aspinwall*, 21 How. Rep. 539. The board of commissioners of a county were authorized by statute to subscribe for railroad stock and to issue bonds of the county therefor, in case a majority of the voters of the county should so determine, after a certain notice should be given of the time and place of election.

The board subscribed for the stock and issued the bonds, purporting to act in compliance with the statute. The required notice was not given, and it was contended that, consequently, the power to issue the bonds was never vested in the board. It was conceded by the court that every person dealing in the bonds was chargeable with a knowledge of the statute under which they were issued, and that as the board was acting under delegated authority, he must show that the authority was properly conferred. But it was held, 1. That as the bonds imported on their face a compliance with the law under which they were issued, the purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power. "The purchaser of the bonds had a right to assume that the vote of the county, which was made a condition of the grant of the power, had been obtained, from the fact of the subscription by the board to the stock of the railroad company, and the issuing of the bonds." 2. That upon the true construction of the statute, the board were the proper judges whether a majority of the votes in the county had been cast in favor of the subscription. The court said: "The right of the board to act in an execution of the authority is placed upon the fact that a majority of the votes had been cast in favor of the subscription, and to have acted without ascertaining it, would have been a clear violation of duty, and the ascertainment of the fact was necessarily left to the inquiry and judgment of the board itself, as no other tribunal was provided for the purpose. The board was one, from its organization and general duties, fit and competent to be the depository of the trust thus confided to it." "We do not say that the decision of the board would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the power and before the rights and interests of third parties had attached; but after the authority had been executed, the stock subscribed, and the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question."

This case has been followed in several subsequent cases in the same court, the latest of which is *Supervisors* v. *Schenck*, 5 Wall. Rep. 772, decided in 1867. In all these cases, the bonds in question were payable to bearer and passed by delivery. That circumstance was not expressly made a ground of decision in the case of *The Commissioners of Knox County* v. *Aspinwall*, which

proceeded on the principle of the case of *Royal Bank* v. *Turquand*, where this instrument was a common bond payable to the plaintiff. In the case in 5 Wallace the opinion, referring to the previous cases, says: "When a corporation has power, under any circumstances, to issue negotiable securities, the decision of this court is, that the *bonâ fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached in the hands of such a holder than any other commercial paper."

This ground of decision is equally applicable to the present case. For as we have already seen, the person to whom a bond of the city of Richmond is issued, and who takes it in good faith, takes a legal title, and is no more subject to defences which might be made against a former holder, than he would be if he was the holder of negotiable paper.

It was part of the duty of the officers intrusted with the transfer and renewal of bonds, to ascertain, in every instance, after April 14th 1862, whether the bond transferred represented a confiscated bond, and to certify whether it did or did not in the form of the renewed bond. When, therefore, these officers failed, in any case, through negligence, to certify on the face of a bond issued by them that it represented a confiscated bond, when such was the fact, it was the common case of an agent acting negligently in the regular course of his employment. The law is well settled and familiar that, in such cases, the principal must bear the consequences of his agent's negligence, as between himself and an innocent third person, even though the act or omission of the agent, which constitutes the negligence, was wholly unauthorized by the principal, or even positively forbidden by him: 1 Parsons' Sel. Ca. 180; 14 How. Rep. 486. Upon this principle a bank is held to suffer for the negligence of its officer, who received from an innocent person payment of a debt in forged notes, which purport to be the issue of the bank: *U. S. Bank* v. *Bank of Georgia*, 10 Wheat. Rep. 333. So when an officer of a bank, through negligence, pays to an innocent holder a forged check which purports to be drawn upon the bank by one of its customers: *Levy* v. *Bank of U. S.*, 1 Binn. Rep. 27. And so the bank must bear the loss, where its officer permits a transfer of stock under a forged power of attorney, or is otherwise guilty of negligence or of fraud in the issue or transfer of stock: *Davis* v.

Bank of England, 2 Bingham 393; *Pollock* v. *National Bank*, 3 Seld. Rep. 274; *Bank of Kentucky* v. *Schuylkill Bank*, 1 Parsons' Sel. Ca. 180; *Bridgport Bank* v. *N. Y. and N. H. Railroad Co.*, 30 Conn. Rep. 231; *N. Y. and N. H. Railroad Co.*, 34 N. Y. Rep. 30; *Sewall* v. *Boston Water Power Co.*, 4 Allen Rep. 277.

The city bonds, as I have said, were put upon the market by the city and were the subject of daily traffic. The public were incited to deal in them, and it was important to the credit of the city that they should do so with confidence and safety. To insure its own safety, and at the same time the safety of purchasers, the city undertook to mark the class of confiscated bonds. Upon principles of good faith and fair dealing, we must consider that the intention was, not only to admonish purchasers as to what bonds they could not buy without risk, but also to inform them as to what bonds they might buy with safety. The absence of a statement in a bond that it represented a confiscated bond, was equivalent to a representation to the person to whom it was issued and to all others who might trade for it, that it did not represent such a bond. It was in law the representation of the city, because made in its behalf by officers charged by it with the duty of issuing all bonds and of representing, on the face of each, whether it did or did not belong to the class of confiscated bonds.

From the nature of the business, the city knew that this representation, conveyed by the form of the bond, would be relied on, and must have intended that it should be. When a party has relied upon it, and in good faith paid his money on the faith of it, it would be the height of injustice to allow the city to say to him that it is not true, and that it was his folly to believe it.

This case therefore falls within the principle of estoppel *in pais*, and the city must be held liable to De Voss to the same extent as if the representation conveyed by the form of the bond was in fact true. It is not necessary, in order to bring a case within the principle of estoppel, that the representation should be made fraudulently, or with a positive intention to deceive; nor, on the other hand, is it enough that it has been relied on, in point of fact, when there was no intention that it should be, or reasonable expectation, from the course of business or otherwise, that it would be.

The principle, as stated by Lord DENMAN in *Pickard* v. *Sears*, 6 Ad. & El. Rep. 469 (33 E. C. L. R. 115), is, that "when one by his acts or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter, a different state of things existing at the same time." In *Freeman* v. *Cooke*, 2 Exch. Rep. 663, Baron PARKE, delivering the judgment of the court, said, that by the term "wilfully," as here used by Lord DENMAN, "we must understand, if not that the party represents that to be true which he knows to be untrue, at least that he means his representation to be acted upon, and that it is acted upon accordingly; and if, whatever a man's real intention may be, he so conducts himself that a reasonable man could take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it, as true, the party making the representation would be equally precluded from contesting its truth; and conduct by negligence or omission, when there is a duty cast upon a person, by usage of trade or otherwise, to disclose the truth, may often have the same effect." Here the duty of making known the truth as to the character of every bond issued after April 14th 1862, was cast upon the city by its own undertaking.

In a case in which a corporation put its bonds upon the market, under certain implied representations inviting public confidence in their validity and value, but where no direct and express representation had been made to the particular purchaser, the Supreme Court said: "A corporation, quite as much as an individual, is held to a careful adherence to truth in their dealings with mankind, and cannot, by their representations or silence, involve others in onerous engagements, and then defeat the calculations and claims their own conduct has superinduced:" *Zabriskie* v. *C. C. & C. R. R. Co.*, 23 Howard Rep. 381. The same language was repeated subsequently in the case of a municipal corporation: *Bissell* v. *City of Jeffersonville*, 24 Howard Rep. 287.

It was said in the argument by the counsel for the appellee, that the city itself had no authority, under the charter, to execute the bond to De Voss, because it was not given for money lent to the city, or for any other sufficient consideration. But the city had authority to execute bonds in proper cases without

limit as to number or amount, and, for reasons already mentioned, it cannot allege against De Voss that this particular bond was not executed in a proper case. And it is at least doubtful upon the authorities, whether a corporation can, in any case, allege against a third person who has contracted with it, that its contract was void because *ultra vires*, when the other party had no knowledge of the facts which made it so: *Eastern Counties R. Co.* v. *Hawkes*, 35 Eng. L. & Eq. Rep. 8; *Bateman* v. *Mayor, &c.*, 3 H. & Nor. Rep. 323; *Bissell* v. *Mich. S. & N. Ind. R. R. Co.*, 22 N. Y. Rep. 258. If this had been the case of shares of stock issued in excess of the number directed by the charter, the case would have been different; for, in such a case, as was said in the case of *N. Y. & N. H. R. R. Co.* v. *Schuyler et al.*, 34 N. Y. Rep. 30, the validity of such shares is a legal impossibility.

There is a class of cases in New York, relied on for the appellants, in which it has been settled, as the law of that state, applicable to all cases of agency, that where, upon comparing the act of the agent with the power given to him, it appears to be such an act as the agent may lawfully do under the power, and the question whether it was in fact done in conformity with the power, or was an abuse of it, depends upon the state of extrinsic facts within the knowledge of the agent, and not known to the other party, such other party has a right to presume that the state of extrinsic facts is such as to authorize the act, and the principal will be bound. The doing by the agent of an act of such a kind that it may be within the power, is regarded as a representation by him that in point of fact it is within it; a representation which, it is held, he has authority from the principal to make, resulting by implication from his employment, and all persons dealing in good faith are held entitled to rely on the truth of this representation: *North River Bank* v. *Aymar*, 3 Hill Rep. 262; *F. & M. Bank* v. *B. & D. Bank*, 16 N. Y. Rep. 125; *Exch. Bank* v. *Monteath*, 26 N. Y. Rep. 505; *Griswoold* v. *Haren*, 25 N. Y. Rep. 596; *N. Y. & N. H. R. R. Co.* v. *Schuyler et al.*, 34 N. Y. Rep. 30. This doctrine was not established without strong opposition, and was objected to as unsound in principle and in conflict with authority: *Mech. Bank* v. *N. Y. & N. H. R. R. Co.*, 3 Kernan Rep. 599; Op. of COMSTOCK, J., 16 N. Y. Rep. 125, and cases cited. See also *Stagg* v. *Elliott*, 12 C. B. Rep. N. S. 373 (104 E. C. L. Rep.);

Mussey v. *Beecher*, 3 Cush. Rep. 511; *Sears* v. *Wingate*, 3 Allen Rep. 103; *Mann* v. *King*, 6 Munf. Rep. 428; *Stainbach* v. *Read & Co.*, 11 Gratt. Rep. 281; *Same* v. *Bank of Va.*, Ibid. 269.

If this doctrine is sound, it has a conclusive application to the present case. But I have not found it necessary to invoke so broad a principle, and as there seems to be difficulty in reconciling the authorities, I have thought it best to decide this case upon its own special circumstances, and to leave the general question open until a case shall arise which renders its decision necessary.

I am of opinion that the decree should be reversed and the bill dismissed.

Superior Court of Chicago.

CONNECTICUT MUTUAL LIFE INSURANCE CO. *v.* WINCHESTER HALL ET AL.

During a war contracts between citizens of the opposing belligerents are completely suspended, and cannot be enforced even by a proceeding *in rem*.

Therefore a mortgagee of land in Illinois could not sue out his mortgage while the mortgagor was a citizen of Louisiana, which was in insurrection; and a decree of foreclosure made under such circumstances was opened by a court of equity, although the statutory period for redemption had passed.

JAMESON, J.—This is a petition for leave to come in, pursuant to the provisions of chapter 21, section 15, of the Revised Statutes, and file an answer to a bill of foreclosure, on which a final decree was entered in 1862.

The facts upon which the petition, as originally filed, was grounded were that the Connecticut Mutual Life Insurance Company, in March 1862, filed a bill to foreclose a mortgage given by the petitioner and his wife in 1859, upon certain lands in Chicago, to secure a bond for $8000, payable in 1864, with interest semi-annually. The bill alleged a failure to pay several instalments of interest due according to the conditions of the bond. This suit was prosecuted to a decree of foreclosure, under which a sale of the mortgaged premises was made September 15th 1862. From this sale no redemption was effected. The petitioner stated that of all the defendants in the suit he was the only one